SCHAPIRO DECLARATION EXHIBITS CONTINUED

Schapiro Exhibit 115

Subject: RE: youtube
From: Kadetsky, Deborah <EX:/O=VIACOM/OU=MTVUSA/CN=RECIPIENTS/CN=USER ACCOUNTS/CN=USER/CN=KADETSKD>
To: Carbone, Tony
Cc: Date: Tue, 15 Aug 2006 20:52:54 +0000

i gotta send something to our friends at youtube, she wrote me back in a flash that they're down already. so great.

From: Carbone, Tony
Sent: Tuesday, August 15, 2006 4:38 PM
To: Kadetsky, Deborah
Subject: FW: youtube

From: Hohman, Ryan
Sent: Tuesday, August 15, 2006 4:37 PM
To: Carbone, Tony
Subject: RE: youtube

Here's two more. There's a few random clips of Sumthin', without the poop. If you want these removed I can get you the links. Let me know. -Ryan

http://youtube.com/watch?v=z0lkTYOFwfs
http://youtube.com/watch?v=H5C6LJ6NQqw

From: Carbone, Tony
Sent: Monday, August 14, 2006 8:44 PM
To: Hohman, Ryan
Subject: youtube

can you check again in the mornig plz? these people just won't give up...i'll also give you the rundown in the morning as to why this is such a big deal

thx man

Schapiro Exhibit 116

Subject: FW: Urgent request
From: "Cahan, Adam" <EX:/O=VIACOM/OU=MTVUSA/CN=RECIPIENTS/CN=CAHANA>
To: 'Zahavah Levine'
Cc: chris@youtube.com; chad@youtube.com
Date: Tue, 05 Sep 2006 18:21:22 +0000

Really appreciate the speedy action here. Goes a long way with our programmers.
~Owe you one :)
Adam

_____

From: Kadetsky, Deborah
Sent: Tuesday, September 05, 2006 2:04 PM
To: Cahan, Adam; Rinzel, Mike; Taylor, Benjamin; Maxwell, Tony; Carbone, Tony
Cc: Kiechlin, Hank; Imm, Tina; Olde, Jeff
Subject: RE: Urgent request

fyi, folks. looks like the video has been officially removed.
http://www.youtube.com/watch?v=O735CLKre8w

_____

_____

From: Zahavah Levine [mailto:zahavah@youtube.com]
Sent: Tuesday, September 05, 2006 10:35 AM
To: Cahan, Adam; chris@youtube.com; chad@youtube.com
Subject: RE: Urgent request

No problem Adam, we will take it down right away.

Best,

Zahavah

_____

From: Cahan, Adam [mailto:Adam.Cahan@mtvn.com]
Sent: Tuesday, September 05, 2006 7:13 AM
To: chris@youtube.com; chad@youtube.com; Zahavah Levine
Subject: Urgent request
Importance: High

YouTube Team -

Sorry to reach out to you directly on this but incredibly urgent from our perspective. (legal will be reaching out)

"nystudent" - someone internal at MTV Networks has released upcoming episodes of our Celebreality - Flavor Flav episode.

Anything you can do to quickly take this down would be greatly appreciated.

<http://www.youtube.com/watch?v=O735CLKre8w> http://www.youtube.com/watch?v=O735CLKre8w

Schapiro Exhibit 117

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

VIACOM INTERNATIONAL, INC., COMEDY PARTNERS, COUNTRY MUSIC. TELEVISION, INC., PARAMOUNT PICTURES CORPORATION, and BLACK ENTERTAINMENT TELEVISION, LLC, Plaintiffs, vs. YOUTUBE, INC., YOUTUBE, LLC, and GOOGLE, INC., Defendants.	NO. 07-CV-2103
THE FOOTBALL ASSOCIATION PREMIER LEAGUE LIMITED, BOURNE CO., et al., on behalf of themselves and all others similarly situated, Plaintiffs, vs. YOUTUBE, INC., YOUTUBE, LLC, and GOOGLE, INC., Defendants.	NO. 07-CV-3582

VIDEOTAPED DEPOSITION OF MARCO BERROCAL
NEW YORK, NEW YORK
NOVEMBER 5TH, 2009

JOB NO. 18082

VIDEOTAPED DEPOSITION OF MARCO BERROCAL, held at the offices of Mayer Brown, 1675 Broadway, New York, New York, pursuant to notice, before Maureen Ratto, Registered Professional Reporter and Notary Public of the State of New York on November 5, 2009, at 10:10 a.m.

A P P E A R A N C E S

FOR THE PLAINTIFFS:

PROSKAUER ROSE, LLP

BY: WILLIAM M. HART, ESQ.

DANIEL P. GOLDBERGER, ESQ.

1585 Broadway, New York, NY 10036

(212)969-3095

whart@proskauer.com

FOR THE BOURNE DEFENDANTS:

MAYER BROWN, LLP

BY: CHRISTINE M. HERNANDEZ, ESQ.

GREGORY FRANTZ, ESQ.

1675 Broadway, New York, NY 10019

(212) 506-2146

Chernandez@mayerbrown.com

Q. I'm not asking for substance of discussion you had with counsel over legal advice. I'm asking to the extent that you are the one who makes the
14:32:51 ultimate decision, other than information that you have received from counsel, do you base your decision on any other factors?

MR. HART: That's a different
14:33:03 question.

A. Well, each particular case I would look at it and a fair use maybe one matter. There maybe other issues that were brought up. So, in a vague
14:33:28 respect there could be other factors that I'm considering.

Q. What other issues would you consider in conjunction with fair use? Can you give me an example?

14:33:40 MR. HART: I won't let you answer that question. If there are other considerations that you raised and discussed with counsel. It's only going to be independent of your
14:33:48 discussions with counsel.

Q. Can you answer the question, keeping in mind counsel's instruction?

A. Can you repeat it, please?

Q. I'm asking you what other issues would you consider in conjunction with fair use? Can you give me an example?

MR. HART: Maintain my objection and the way that question came out has other form problems but go ahead.

14:34:29 A. Anything that would be brought up at that point we would clearly discuss with our counsel. There maybe one thing we think of is fair use but there maybe other issues but it's all discussed with my attorneys.

Q. Okay. Has there ever been an instance when Bourne decided not to take any action or otherwise send a -- strike that.

14:35:01 Has there ever been an instance where Bourne decided not to issue a take-down as a result of a fair use analysis?

A. No.

14:35:28 Q. With respect to take-downs that

Bourne has sent to YouTube or have been sent on Bourne's behalf to YouTube, in what amount of time does YouTube on average respond to that take-down notice?

MR. HART: Objection to form, respond.

A. I would say within 24 hours.

Q. Are you -- to your knowledge, has YouTube ever taken more than 24 hours to respond to a take-down notice concerning the Bourne work?

MR. HART: Maintain an objection, form, respond.

A. I don't absolutely -- I don't recall thinking why did this take so long.

Q. Do you have any objection as to the length of time it takes YouTube to take down a specific URL containing what Bourne believes to be infringing content?

MR. HART: Aside from the allegations in the lawsuit.

MS. HERNANDEZ: Counsel, I take

issue with your clarification.

MR. HART: It's not a clarification, it's an objection.

MS. HERNANDEZ: Well then you can make your objection but there is no need to make some purported clarification to my question.

14:37:42

A. Can you repeat it then?

Q. Absolutely. Do you have any objection as to the length of time it takes YouTube to take down a specific URL containing what Bourne believes to be infringing content?

14:37:54

MR. HART: Objection. Lack of foundation, misleading, disregards everything about this lawsuit. You're free to answer.

14:38:02

A. No.

MR. HART: What? You put up your hand like wait a minute. What?

14:38:28

A. I guess thinking it out, I mean, the time it took for them to respond. This part of my feeling is that it shouldn't have been up there in the first place, so I don't know if that's

14:38:39

Does it say Murbo?

MR. HART: To hold the right to what?

MS. HERNANDEZ: I'm trying to -- the copyright ownership in the Murbo catalogue.

15:15:08

A. If the --

MR. HART: I caution you not to speculate.

A. A Murbo agreement with a BMI writer which pretty much decides whether the writer belongs to BMI we would do an agreement with Murbo and the writer.

15:15:19

Q. Does Bourne have any sub-publishers?

15:15:30

A. Yes.

Q. Who are the sub-publishers?

A. We have various sub-publishers throughout the world.

15:15:52

Q. And what about in the US, is there a sub-publishing entity?

A. No.

Q. What about in Canada, is there a sub-publishing entity?

15:16:10

A. We have a company in Canada.

Q. What is the name of that company?

A. Bourne Canada. We also have a representative who collects performance and collects some royalties for us on our behalf in Canada.

Q. What entity -- what is that entity called?

15:16:44 A. Radio Chart Facts.

Q. Are they authorized -- is Radio Chart Facts authorized to issue licenses on behalf of Bourne?

A. No.

15:16:55 Q. Does Bourne Canada issue licenses?

A. I can only speak since '06. And as I recall, it has not.

Q. Why can you only speak since

15:17:26 '06?

A. Bebe Bourne, my mother, handled it before then. So I don't recall seeing a Bourne Canada license but I can't outright say no.

15:17:39 Q. What function does Bourne Canada

perform?

A. It collects royalties, say, from the Canadian Mechanical Society.

Q. Does it perform any other

15:17:56 function?

A. None that I recall.

Q. Setting aside whether Bourne Canada did or did not actually issue licenses, is Bourne Canada authorized

15:18:14 to issue licenses for songs in the Bourne catalogue?

A. No. Again, I say that since '06, I would handle it. There's -- in any correspondence going to Bourne Canada

15:18:33 would come to me.

Q. Do you know if prior to '06 Bourne Canada was authorized to issue licenses, whether they did or not?

A. They would not issue a license

15:18:55 without the permission of Bourne.

Q. And how does Bourne Canada -- how did Bourne Canada seek the permission of Bourne?

MR. HART: Lack of foundation.

15:19:19 A. Well, requests could have gone

Schapiro Exhibit 118

From: Jenn Duran[jduran@x-raydogmusic.com]
Sent: Tuesday, October 6, 2009 07:14:44 PM
To: Copyright Service[copyright@youtube.com]
CC: Tim Stithem[tim@x-raydogmusic.com]; Mitch Lijewski[mitch@x-raydogmusic.com]
Subject: Take Down Notice

Attachments: XRD Boston Celtics You Tube Links Takedown.DOC

Please see the attached Takedown Notice.

Thanks very much,
Jenn

Jenn Duran
Manager of Licensing & Finance
X-Ray Dog Music, Inc.
1023 North Hollywood Way, Suite 103
Burbank, CA 91505
(818) 597-4859 phone
(818) 783-9236 fax
(818) 497-4028 mobile

AIM: xrdjenn

jduran@x-raydogmusic.com

October 5, 2009

YouTube, Inc.

c/o Copyright@youtube.com

Dear Sir/Madam:

I, Jenn Duran, state under penalty of perjury that I am authorized to act on behalf of X-Ray Dog Music, Inc., the owner of exclusive rights in the works identified below. I have a good faith belief that use of the material in the manner complained of below is not authorized by X-Ray Dog Music, Inc., its agents, or the law, and as a result of being posted to YouTube, has been downloaded and copied by others for commercial use, such as unauthorized use by a sports team. The information provided herein is accurate to the best of my knowledge.

I hereby request that you immediately remove the infringing material at the locations specified below and all other locations on your site.

Nothing in this letter serves as a waiver of any rights or remedies with respect to the alleged infringements, all of which are expressly reserved. In particular and without limitation, this notice is without prejudice to the positions that (1) 17 U.S.C. 512 does not apply and (2) you have an affirmative obligation to prevent or limit infringement of my exclusive rights regardless of whether you receive a takedown notice.

Should you need to contact me, I may be reached at Jenn Duran jduran@x-raydogmusic.com.

Sincerely,

Jenn Duran
Manager of Licensing & Finance
X-Ray Dog Music, Inc.
1023 North Hollywood Way, Suite 103
Burbank, CA 91505
(818) 597-4859 office
(818) 783-9236 fax

Identification of the copyrighted work claimed to have been infringed, and the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed:

#	Copyrighted Work	Infringing URL
1	Darkest Empire	http://www.youtube.com/watch?v=h6jPa_PMDhU
2	Darkest Empire	http://www.youtube.com/watch?v=boelq04QuuU

Schapiro Exhibit 119

From: Copyright Service[copyright@youtube.com]
Sent: Wednesday, October 7, 2009 12:53:40 AM
To: Jenn Duran[jduran@x-raydogmusic.com]
CC: Tim Stithem[tim@x-raydogmusic.com]; Mitch Lijewski[mitch@x-raydogmusic.com]
Subject: Re: [#522573033] Take Down Notice

Dear Jenn,

Thank you very much for your notification. The content has been removed.

Sincerely,

The YouTube Team

Original Message Follows:

From: Jenn Duran <jduran@x-raydogmusic.com>
Subject: Take Down Notice
Date: Tue, 06 Oct 2009 11:14:44 -0700

> Please see the attached Takedown Notice.
>
> Thanks very much,
> Jenn
>
>
>
> Jenn Duran
> Manager of Licensing & Finance
> X-Ray Dog Music, Inc.
> 1023 North Hollywood Way, Suite 103
> Burbank, CA 91505
> (818) 597-4859 phone
> (818) 783-9236 fax
> (818) 497-4028 mobile
>
> AIM: xrdjenn
>
> jduran@x-raydogmusic.com
>
>

Schapiro Exhibit 120

From: Courtney Nieman
Sent: Wednesday, June 07, 2006 8:20 PM
To: heather gillette
Subject: RE: [html] RE: Content Verification Program - Videos flagged by bayp1s1t

Thanks - that's exactly what I needed to know. It will be my pleasure to talk you up to the Paramount Executives.

Courtney

From: heather gillette [mailto:heather@youtube.com]
Sent: Wednesday, June 07, 2006 12:49 PM
To: Courtney Nieman
Subject: RE: [html] RE: Content Verification Program - Videos flagged by bayp1s1t

Dear Courtney,

If we receive the notification during normal business hours then we take them down in about a half an hour. If it is received outside of business hours it takes about 8 hours.

Thank you very much for acknowledging our prompt responses!

Heather

From: Courtney Nieman [mailto:courtneyni@baytsp.com]
Sent: Wednesday, June 07, 2006 12:39 PM
To: heather gillette
Subject: RE: [html] RE: Content Verification Program - Videos flagged by bayp1s1t

Heather,

I want to bring YouTube up and give you credit for the means and speed you perform the take down task. In case I am asked, what is that average time between a request for removal and the actual removal, when someone uses your tool and method?

Our phone call with Paramount takes place at 4pm today, so any response before then will be appreciated.

Courtney

From: heather gillette [mailto:heather@youtube.com]
Sent: Wednesday, June 07, 2006 11:49 AM
To: csm
Subject: [html] RE: Content Verification Program - Videos flagged by bayp1s1t

Removed, thank you!

From: YouTube Service [mailto:service@youtube.com]
Sent: Wednesday, June 07, 2006 8:49 AM
To: csm@baytsp.com; Copyright Bulk
Subject: Content Verification Program - Videos flagged by bayp1s1t

YouTube Logo

The following videos have been flagged as infringing by bayp1s1t (the content owner) and need to be reviewed for deletion:

http://www.youtube.com/watch?v=SxvPLYnxZWE&search=Over%20The%20Hedge%20Lycaein
http://www.youtube.com/watch?v=cGcUjf2l35M&search=Over%20The%20Hedge%20Lycaein
http://www.youtube.com/watch?v=JEGkTb_dl64&search=Over%20The%20Hedge%20Lycaein
http://www.youtube.com/watch?v=d0YTYYiF8yg&search=Over%20The%20Hedge%20Lycaein
http://www.youtube.com/watch?v=KTNNzqEZYLE&search=Over%20The%20Hedge%20Lycaein
http://www.youtube.com/watch?v=MFfUVdBajbs&search=Over%20The%20Hedge%20Lycaein
http://www.youtube.com/watch?v=wxtv1TR3vdQ&search=Over%20The%20Hedge%20Lycaein
http://www.youtube.com/watch?v=MJMtvWQ4pqo&search=Over%20The%20Hedge%20Lycaein
http://www.youtube.com/watch?v=2oWuWoxpoxE&search=Over%20The%20Hedge%20Lycaein

If you are the content owner, you are receiving this email as verification that we have received your deletion requests.

Copyright © 2006 YouTube, Inc.

copyright_cop.tmpl

--
No virus found in this incoming message.
Checked by AVG Free Edition.
Version: 7.1.394 / Virus Database: 268.8.2/357 - Release Date: 6/6/2006

--
No virus found in this incoming message.
Checked by AVG Free Edition.
Version: 7.1.394 / Virus Database: 268.8.2/357 - Release Date: 6/6/2006

Schapiro Exhibit 121

From: Copyright Service [copyright@youtube.com]
Sent: Thursday, October 19, 2006 12:50 AM
To: Courtney Nieman
Subject: Re: [Fwd: Notice ID: 158-4325 Notice of Unauthorized Use of Viacom Property]

Courtney,

Thanks for your explanation! It makes much more sense now. Did you notice any that did not get removed from yesterday? Or even previous days? I got 2 more from Viacom today (IDs: 158-4328 & 158-4329) that were blank as well. I'm assuming that if you aren't getting videos that weren't removed it isn't a problem. But I want to keep you updated in case it is. Let me know if you need any more info, or if you want me to forward the specific emails back to you.

Misty
The YouTube Team

PS Don't work too late!

Courtney Nieman wrote:
> Misty,
>
> That's good to know that you only got one blank email. We are only
> sending 1 or 2 emails at you each day, but each email may contain a
> number of videos. We can check in the morning.
>
> To summarize how things work on our end...We have a crawlers that find
> infringements on a number of protocols (including YouTube). In the case
> of streaming video, we take the list and "hash it", that is we manually
> check each link to be sure it is out client's content. Then we build a
> list of enforceable infringements, and bundle them together by property
> holder. Then one email per property holder gets sent to the streaming
> video source, i.e. YouTube.
>
> To follow up, we check the next day if the video came down. If not we
> will contact YouTube and dbl check that the email arrived, and if not we
> will re-send the email. We enjoy the relationship we have with you and
> always talk positively about the YouTube experience when it comes to
> copyright enforcement.
>
> For now, we'll check on the clips in the morning and follow up with
> Heather and/or yourself at that time.
>
> PS - I'm working late because of another customer issue - there is never
> any rest for customer service. Have a good night and I'll touch base
> tomorrow.
>
>
> Courtney
>
> -----Original Message-----
> From: Copyright Service [mailto:copyright@youtube.com]
> Sent: Tuesday, October 17, 2006 6:06 PM
> To: Courtney Nieman
> Subject: Re: [Fwd: Notice ID: 158-4325 Notice of Unauthorized Use of
> Viacom Property]
>
> Courtney,
>
> I believe this is the only blank email we have gotten so far today. But

HIGHLY CONFIDENTIAL BAYTSP 001125401

> I know in the past we have gotten a few that were blank. Do you have a
> list of the videos you would like removed? I can double check that they
> were taken down. Also, I can forward any in the future that we get that
> are blank. I am assuming that the system is finding no videos that are
> in the search terms but is still sending us an email?
>
> Misty
>
>
> Courtney Nieman wrote:
>> Misty,
>>
>> I'm not sure what the problem is, but we are looking into it. Does
>> this mean you have not taken down any videos today that belong to
>> Viacom? If that is the case can you send me a list of "notice id"s
>> that have come up blank. We can resend if necessary.
>>
>>
>> Courtney
>>
>> -----Original Message-----
>> From: Copyright Service [mailto:copyright@youtube.com]
>> Sent: Tuesday, October 17, 2006 4:49 PM
>> To: Courtney Nieman
>> Subject: [Fwd: Notice ID: 158-4325 Notice of Unauthorized Use of
>> Viacom Property]
>>
>> Hey Courtney,
>>
>> Ive been getting a few blank no-reply emails a day... Do you know why
>> they are coming through empty? I just don't want us to miss anything,
>> if it is possible there is some sort of error before the message is
> sent?
>> Thanks so much!
>>
>> Misty
>>
>>
>

HIGHLY CONFIDENTIAL

Schapiro Exhibit 122

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

VIACOM INTERNATIONAL, INC., COMEDY PARTNERS, COUNTRY MUSIC. TELEVISION, INC., PARAMOUNT PICTURES CORPORATION, and BLACK ENTERTAINMENT TELEVISION, LLC, Plaintiffs, vs. YOUTUBE, INC., YOUTUBE, LLC, and GOOGLE, INC., Defendants.	NO. 07-CV-2103
THE FOOTBALL ASSOCIATION PREMIER LEAGUE LIMITED, BOURNE CO., et al., on behalf of themselves and all others similarly situated, Plaintiffs, vs. YOUTUBE, INC., YOUTUBE, LLC, and GOOGLE, INC., Defendants.	NO. 07-CV-3582

VIDEOTAPED DEPOSITION OF WARREN SOLOW
NEW YORK, NEW YORK
JANUARY 14TH, 2010

JOB NO. 18509

VIDEOTAPED DEPOSITION OF WARREN SOLOW, held at the offices of Wilson, Sonsini, Goodrich & Rosati, PC, 1301 Avenue of the Americas, New York, New York, pursuant to notice, before Maureen Ratto, Registered Professional Reporter and Notary Public of the State of New York on January 14, 2010, at 10:13 a.m.

A P P E A R A N C E S

FOR THE PLAINTIFFS:

JENNER & BLOCK, LLP

BY: SUSAN J. KOHLMANN, ESQ.

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(212)891-1690

skohlmann@jenner.com

FOR THE DEFENDANTS:

WILSON, SONSINI, GOODRICH & ROSATI, LLP

BY: MICHAEL H. RUBIN, ESQ.

650 Page Mill Road, Palo Alto, CA 94304

650-849-3311

MRUBIN@wsgr.com

right?

MS. KOHLMANN: Objection. Misstates the record. You can answer.

A. Importance is a subjective word but that certainly is information that I'd like to have.

Q. What value does that information provide to you in the execution of your responsibilities at Viacom?

14:40:17 A. It adds an increased level of precision.

Q. In what sense?

A. It helps mitigate the removal of clips that some parts of the organization would prefer to stay in place.

Q. It prevents Viacom from mistakenly removing content that it itself has authorized to be on the service. Isn't that right?

MS. KOHLMANN: Objection as to form.

A. Those are your words. I answered that using my words a moment ago.

Q. Is there anything inaccurate about what I said?

A. I prefer to speak with my own words and not another person's words. So I'll stick with the answer I used originally.

Q. Is there anything inaccurate about what I said?

A. I have no idea. I'd prefer my words and not yours.

Q. I'm just trying to get some clarity here, Mr. Solow.

A. I think the best way to get clarity is to accept the words that I use.

Q. But do you see a difference between the version of your statement and mine?

A. I don't know how you define the words that you use. I know how I define the words that I use. So I'm more comfortable using the words that come out of my mouth.

Q. Viacom hires third parties to upload content to YouTube from time to

time. Isn't that right?

A. I believe that to be so.

Q. Is information related to that activity also provided to your department?

MS. KOHLMANN: Objection as to form.

A. Information of that variety has been provided to my department.

Q. Do you also instruct Mr. Housley to maintain information related to that activity?

A. Yes.

Q. Have you ever heard the term, Mr. Solow, white list?

A. Yes.

Q. What do you understand the term white list to mean?

A. In what context?

Q. In the context in which you heard it in your employment capacity at Viacom.

A. I've heard our approved outside counsel list referred to in that list, preferred vendor lists, I've heard

lists of video content that we would like, that has been authorized for placement in various locations on the internet referred to in that regard also.

14:44:10

Q. Have you also heard lists of authorized user names from whom postings to websites such as YouTube should not be removed referred to as a white list?

14:44:25

MS. KOHLMANN: Objection as to form.

A. I've heard of -- not lists of user names but that user name -- user names have been a component of such white lists, yes.

14:44:39

Q. Is the information that Mr. Housley compiles, that we were just referring to a moment ago, referred to as a white list?

14:44:53

A. By some people.

Q. By you, Mr. Solow?

A. Generally not.

Q. Have you ever referred to that as a white list?

14:45:02

A. I may have been on communications where the term is used but I generally try to avoid it because I find it offensive.

14:45:15 Q. What do you find offensive about that term?

A. I see a racial component in the entomology of that phrase that I find offensive.

14:45:29 Q. Interesting. It is a term that is used at Viacom to describe, as you explained, content that's been authorized to be on the YouTube service and should not be removed, though,

14:45:43 right?

MS. KOHLMANN: Objection as to form.

A. I have noted the use of the term white list and various usages at

14:45:55 Viacom. I often make my objections known then also.

Q. Well, to be clear, going forward in the line of questioning that I'm going to ask you about, I may refer to

14:46:13 that phrase from time to time,

certainly not meant to relay any racial overtone whatsoever. I'm simply referring to it because it is the way Viacom has referred to it in documents produced to us and we want to make sure we are consistent with the internal terminology, to the extent there are other ways of referring to it in-house, I understand that it may be done that way, for ease of reference in the deposition.

14:46:22
14:46:32
14:46:42
14:46:49
14:47:01

A. I completely understand that.

Q. Your content based objection is duly noted and I can see the basis for it.

A. I understand.

Q. Please take no offense of the use of the term today.

A. I won't.

Q. But do you understand what I mean when I refer to white list in the context of the uploading activity that Viacom and its agents have done and are doing on the YouTube website?

MS. KOHLMANN: Objection as to

form.

A. I -- I am familiar and -- with the use of that term in some quarters around the company for purposes, including online posting of clips.

Q. And it won't lead to any ambiguity if I use that term in connection with the YouTube website in question?

MS. KOHLMANN: Objection.

A. The use of the term itself won't. The context may --

Q. Of course. Of course.

A. -- may be different.

Q. I want to make sure we have the use of the term itself grounded.

A. Yes. I got you.

Q. Now that we got that out of the way. You indicated a moment ago that Michael Housley, at your direction, maintains a set of information related to the uploading activity of Viacom and its agents on the internet including on the YouTube website. Is that right?

A. That's correct.

Q. Do you know if that information is provided to BayTSP?

A. Yes.

Q. Is that information provided to BayTSP?

A. Yes.

Q. How is that information provided to BayTSP?

A. I'm not sure.

Q. Have you ever received that information via e-mail?

A. Can you rephrase the question? I'm not sure what information you're referring to.

Q. How does Michael Housley store that information?

MS. KOHLMANN: Objection as to form.

A. I believe he stores it electronically.

Q. In what form does Michael Housley store that information electronically?

A. I'm not sure.

Q. Is it maintained in a database?

A. I'm not sure.

Q. Is it maintained in an Excel spread sheet?

A. It could be but I'm not sure.

14:49:19 Q. Have you ever requested that Mr. Housley provide you with that information?

A. I have no recollection of asking for it.

14:49:31 Q. And you have no idea, as you sit here today, whether he ever sent it to you?

A. I have no recollection of Michael sending it to me. He sits so

14:49:47 close to me that if I wanted to see something, I have a habit of going and invading his personal space and looking over his shoulder and things.

Q. Other than BayTSP do you know if

14:50:01 there is any other third parties or Viacom agents to whom that information has been provided?

A. I don't have specific knowledge of that but I wouldn't be surprised.

14:50:18 Q. Can you identify any third

video in the three years that passed between or two years that -- two and a half years that passed between your creating this screen shot and the upload of the video. I just don't know -- I'm not a frequent flier in that regard.

Q. The takedown notice then that was originally sent for the video identified in Exhibit 18 was erroneous, wasn't it?

MS. KOHLMANN: Objection as to form.

A. It was mistaken.

MR. RUBIN: I'd like to mark Exhibit 21.

(SolowP-21, is received and marked for identification.)

Q. Mr. Solow, Exhibit 21 is an exhibit by Google in this litigation, GOO 00108200963 through 69. It's an e-mail sent by the e-mail address Michael Housley no dash reply at copyright-compliance.com to copyright at YouTube.com on February 3rd, 2007.

Do you recognize this document, Mr. Solow?

A. No.

Q. Do you know that on the date prior to February 3rd, 2007 Viacom caused a large number of takedown notices to be served on the YouTube website?

17:01:35

MS. KOHLMANN: Objection as to form.

17:01:51

A. Yes.

Q. Roughly how many videos were included in takedown notices provided on February 2nd, 2007 by BayTSP on behalf of Viacom to YouTube?

17:02:01

A. I believe it was approximately 102,000, 103,000.

Q. Do you know how many takedown notices were provided by BayTSP on behalf of Viacom to YouTube in the month of January, 2007?

17:02:24

MS. KOHLMANN: Objection as to form.

A. No.

Q. Was it zero?

17:02:36

A. It might be.

MS. KOHLMANN: Objection as to form.

A. Sorry. It could be.

17:02:41 Q. If I can bring your attention, please, to page ending in 966. Do you see there's a number of different clips on the YouTube service identified in this particular notice of alleged

17:03:19 infringement?

MS. KOHLMANN: Object. Document speaks for itself.

A. Is this really called notice of alleged infringement.

17:03:38 Q. I believe the title on this version of the document is notice ID 158-8264 notice upon authorized use of --

A. The answer to your question is

17:03:47 no.

Q. Do you see there are a number of different clips identified in this document?

MS. KOHLMANN: Same objection.

17:03:58 Document speaks for itself.

Schapiro Exhibit 123

From: Mark M. Ishikawa
Sent: Wednesday, January 24, 2007 10:20 PM
To: Cooper, Donna
Cc: Courtney Nieman; Deana Arizala; Arielle Kim; Evelyn Espinosa; Michelena.hallie@mtvn.com; Cahan, Adam
Subject: RE: [html] BET Asset List

Donna, we are queueing up the takedown notices as instructed by Adam at MTVN. He wants to hold the notices as part of his strategy. This instruction was for all Viacom assets. Please let me know if you want your assets differently.

Thx
Mark

-----Original Message-----
From: Cooper, Donna [mailto:DONNA.COOPER@BET.NET]
Sent: Wednesday, January 24, 2007 10:09 AM
To: Mark M. Ishikawa
Subject: RE: [html] BET Asset List

Mark,

I just want to confirm the Youtube direction for BET. Are you searching and sending take down notices with respect to all occurrences of BET
assets, irrespective of duration or any other parameter? If not, this
is how we would like to proceed.

Thanks,
Donna

Donna Cooper
Senior Associate General Counsel
Black Entertainment Television LLC
1235 W Street, N.E.
Washington, D.C. 20018
[redacted]
(202) 635-6422 (fax)
donna.cooper@bet.net

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Schapiro Exhibit 124

From: Courtney Nieman
Sent: Sunday, January 21, 2007 5:40 PM
To: Mark M. Ishikawa
Cc: Evelyn Espinosa; Travis Hill
Subject: Timeline

Mark,

I received a call from Travis about 17:30 Saturday afternoon, explaining that Adam had called and was upset about the numbers. Specifically that we had reported the CIMS infringement count was over 97,000. I went back through my emails and found the report sent by Chris S. I ran the report from CIMS and confirmed that it had indeed 97K+ infringements.

At around 17:50, I called Adam from home, and he proceeded to lay out his anger at BayTSP. At that point, he said "I have reported this number (97K) to my CEO." He then went on to explain that this number was within the range for taking action, and he had communicated with his CEO that the take down would happen this week. Then he explained that he received a follow-up email for Bay stating that the number was actually closer to 72K. He could not understand a 25K swing downward. I then told Adam I understood his anger and that I was on my way in to the office too investigate, and deal with the issue. I agreed to call Adam back with an update and further information.

I arrived at Bay at around 18:15, and took Stan and Matt into my Suite C and asked for an explanation. They told me everyone had been hashing under the normal rules, and they had seen no reason for any double effort. They could not recall anyone ignoring, and re-approving an infringement, but that they had observed people skipping past approved clips to concentrate on blanks and declines.

I then went over to observe what how the group was hashing, and with the possible exception of one person, everyone was approving videos with some identifiable MTVN bug or show connection. The one person, I took a minute to correct her process, and watched her for a couple more clips. Satisfied, I went back to my desk to come up with two solutions - 1>an explanation for the severe jump in numbers, and a tool that would prevent re-hashing of the same URLs.

I then talked to Travis about changing BVM to show only results that we had not seen before. I wanted something that I could clearly see only new work being performed. That when I called Adam back, I could guarantee were work progressing forward and not going over the same ground. Travis agreed to get a new BVM within 2 hours. I also asked him why the jump was so large, and that's when I found out we had been over reporting our counts from the beginning.

I then talked Evelyn and brought her up to speed.

I called Adam and told him that we had made two major corrections to our process. That rather than the standard definition of an infringement (Filename, URL, Filesize) we would only be reporting on Unique URLs. Second a hashing tool that would prevent anyone from working through anything that was not new. His response was to convey his displeasure and utter anger at BayTSP. He stated that "at of the last calls Bay had come up with a new explanation for their failure to meet his goals." He said "I don't know what you and your people are doing. I don't know if I can trust you anymore." He then requested a call today to show him the new tool and "convince me that you are not wasting any more of my time." He then repeated his observation that if he put "lil bow wow" in as a search term into YouTube he could find "thousands and thousands of hits that are my stuff."

The threats came at the end of the call. Adam said he was at the "very end of his tolerance with Bay." Adam made it clear that this was the last straw and said "I will bring Bay Down. I will call all of my entertainment contacts, Disney, NBC, (another one that I can't remember), and tell them that BayTSP is a sham. I will drive BayTSP out of business."

I listened patiently and told him "I understand your anger, and I will do everything in my power to make sure that Bay works to meet your goals.", I then summarized the his goals for zero tolerance and 100,00 infringements. Adam clarified that he want only MTVN content, and that he "doesn't care what bucket it is in", just that we find it. He wants to have a press announcement that will say "Today MTVN is taking down 100,000 videos and will continue to do so until we are paid for our content."

I told him, I would have a new tool about 50 minutes and I would not leave until we had made significant progress. The call ended at about 19:10 PST.

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To the best of my recollection, that is what transpired on the phone with Adam.

Following that call, more Bay Staff came in, the new tool was deployed, Travis found a cache of infringement he was going to add to the count, and I saw the new report that would give me an accurate count of what was/is in CIMS for MTVN.

When Erik arrived, I went over a summary of events and the new tool. I then worked with everyone else until 1am hashing. By the time I left, we had met my goal of 3000+. We started with 71K - Travis added 2K, at 2:30 this morning I saw count of 76K. When I got up this morning at 7:15 the count was at 78,205 and right now we are at 78,321.

I have set a call/online meeting with Adam for this afternoon at 13:00 PST.

Courtney

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Schapiro Exhibit 125

Subject: Letter to Eric - Time is Now!
From: "Cahan, Adam" <EX:/O=VIACOM/OU=MTVUSA/CN=RECIPIENTS/CN=CAHANA>
To: Wolf, Michael
Cc: Date: Mon, 09 Oct 2006 22:01:04 +0000

Michael -

I feel very strongly that the time is now for Google to negotiate with us otherwise we need to threaten all content comes down from YouTube. I really feel every minute that goes by the industry is waiting. If we threaten to be public with our content takedown notifications than the ball starts rolling immediately. This is now, not end of week. If we threaten we can use it in negotiations for a better deal.

Eric -

I'm glad we had an opportunity to chat this weekend about the Google-YouTube connection. As you know we have to move quickly to address what our position is going to be with Google/YouTube. The default pressure at the corporate level is that we are going to have to announce that Viacom/MTVN is providing cease and desist for all our content at YouTube. As you know, we believe between SouthPark, Stewart, Colbert along with content from MTV and Nickelodeon we represent 25%+ of all content there.

Here is what I would recommend that we do. This week we need to assemble the team that will negotiate for the following priorities.

1. Google Ad Network deal, we have a proposal for how we can work together to better monetize our sites and enable Google to grow the market overall for online branded advertising. As part of this proposal we have suggested the framework and commitments for a "300x250" ad unit.

2. OnSite Paid search and contextual monetization. Our combined scale across our netowrk represents 137M uniques and 7.2B pageviews. We would like to put together what your porposal is for both monetization and operational improvements.

3. Content licensing to YouTube and the associated economics/ structure. Clsoing a deal that will represent the framework for how we work together.

4. MusicWiki we had great traction with Marissa and Susan working on the product but in light of YouTube we'll need to better understand how we work together and sepearte these offerings.

Given the folks we have met with it likely makes sense to have some combination of Susan, Tim and Joan/Marc helping sort through these negotiations.

Looking forward to your response.

Schapiro Exhibit 126

Subject: Next rev
From: "Cahan, Adam" <EX:/O=VIACOM/OU=MTVUSA/CN=RECIPIENTS/CN=CAHANA>
To: 'Blair Harrison'
Cc: Date: Mon, 10 Jul 2006 01:44:02 +0000

List of attachments:
Project Beagle Review 0 3 ac.ppt

YouTube Review

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Executive Summary

- Vision
- Strategic fit
- Key risks
- Valuation
  - Business Drivers
  - Monetization model
- Upside from Viacom/YouTube combination
- Competition
- Company background

1

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Vision For YouTube and Viacom

- We believe YouTube would make a **transformative acquisition** for MTV Networks / Viacom that would immediately make us the leading deliverer of video online, globally.
- YouTube has an extensive **global reach**: it is a top 10 site in 8 countries, a top 20 site in 18 countries, and a top 50 site in 49 countries. Overall, Alexa ranks it 19th in the world. In the US it has reached 20M+ uniques (May NetRatings)
- **MySpace** provided the platform for young audiences as they migrated from passive consumers into creator-consumers of digital content, and dominates globally as a platform for personal web pages and rich media communication.
- YouTube is the **dominant platform** of choice for these audiences as they migrate to using **video** to express themselves.
- We have the opportunity to own this space, and become the **clear leader in community / user generated video globally.**

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Strategic Fit: Audience, Advertiser Relationships And Video Content Make Youtube A Strategic Fit For Viacom

- **Our audience** has embraced User Generated Content and this category remains unexploited by Viacom/MTVN
  - **Time spent** suggests that YouTube has garnered a significant amount of our core demographic time online with 36 minutes on average across all users
- A combined YouTube/Viacom would have scale in **advertiser relationships** in film, entertainment (17% of MTVN today), video games and other demo targeted categories including CPG.
  - With the addition of YouTube **scale** (20M+) we hope to attain a must have status with advertisers
  - Viacom can significantly **enhance CPM** based on multiplatform sales approach.
- As one of the largest owners and producers, **video** is a core competence of MTVN/ Viacom and increasingly a category online critical to our multiplatform sales.
  - Many **highly sought/ viral video** including music videos, humor and others are being sourced from UGC – e.g., "Andrew Video", "WebJunk 20" etc.

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Key Risks And Observations

- YouTube is a **utility** that people use to contribute, share and consume video. The content that is being consumed on YouTube does not follow any video consumption model and business currently in existence.
- Consumption of **"branded" content on YT is relatively low**, in most cases lower than on IFILM, which has a fraction of its audience. For example, *Pirates of the Caribbean 2* trailers consumption on YT = 250k; consumption on IFILM = 1m. Even the much-discussed SNL "Lazy Sunday" sketch and its myriad spoofs have been seen more times on IFILM than on YouTube.
  - Only four of the top 30 most watched videos of all time on YouTube are music videos, one of which is in German. There are no movie trailers in the top 30, nor are there any clips from popular TV shows.
- Assumptions about the ability to monetize YouTube must appreciate that the site today **does not *drive*** any appreciable amount of traffic to branded programming. While this may change, it is important to realize that this is not the way the site functions today, and may be inconsistent with the way people *want* to use it.
- YouTube's future success is heavily dependent on its ability to continue evolving along the lines that it is today. Any justification for this deal that depends on it **becoming something that it currently is not should be discounted.**
- YouTube's traffic is currently about **80% non-US**. The distribution of this traffic around various geographic regions needs to be analyzed to determine the ability to monetize it. *A justification for this US / international mix estimate is provided in the enclosed analysis.*
- The company has strong guidelines surrounding offensive content, which are enforced by its employees and audience alike, and the property is therefore very **advertiser-friendly**.
- **Technology company** at heart – we lack expertise in that area…

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Considerable Risks From Unclear Business Model And Non-core Viacom Competency Requirements

- **Operational requirements and technology competency**
  - Ability to hire and retain technical talent: requires significant technical talent to develop targeted advertising and search related competencies. E.g., cost per play matching video to advertisers. As a corporately owned company it will be more challenging to incent new hires
  - Ongoing investment in infrastructure: YouTube is at an early stage of infrastructure development and will require ongoing investments in infrastructure
  - Investment in innovation: As a platform, YouTube requires ongoing investment in innovation to maintain the relevance of its searches and sharing technology
- **Business model**
  - Unclear monetization: YouTube is an early revenue business with undefined a business model to fund ongoing operations. The company is likely to remain unprofitable in the near term
  - Third party content providers: ownership by a content company is likely to push other content holders to be wary of participating in the platform for fear of bias
- **Audience**
  - Limited audience lock-in: Unlike MySpace, there is less investment in personal profiles and personalities – with limited switching costs audiences are likely to migrate to other sources should the site's appeal be diminished (i.e. non-relevant advertising)
  - Fad-driven nature: Is this simply America's Funniest Home Videos?
- **Advertiser**
  - Branded advertisers have demonstrated concern over association with user generated content and may not value the impressions
- **Competition (see detailed discussion)**

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Valuation

- Abcdefghijkl

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Business model drivers

- YouTube's **traffic is fragile** with respect to attempts to monetize it through traditional "inserted" video advertising.
- Audience tolerance for **pre and post-roll video advertising will be low** compared to websites that are used predominantly for the consumption of professional programming that is not available elsewhere.
- The model we have built assumes **three revenue generation models**, two of which are already in place and are well understood, one of which is new and therefore untested.
- The proposed monetization mechanisms are:
  - **Branded Premium Advertising & Sponsorships**
  - **Cost per View / "Video Ad Sense" Model**
  - **Run Of Site / Advertising Network**

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Monetization - **Branded Premium Advertising & Sponsorships**

- Revenue will be generated from **key real estate**, and will be in the form of auctioned premium advertising and sponsorships.
- Concerns surrounding generation of significant **revenue from entertainment** advertisers (e.g. studios) include:
  - Likely lack of ability to *drive* traffic to home page and other destinations within the site,
  - Most popular and therefore valuable content – such as huge movie releases (trailers, etc.) – will likely be available freely anyway.
- **Paid Placement** – home page auction based sponsored video (i.e. one block where film studios bid for placement of their trailers)
- **Premium Content** – over time the use of ad supported premium clips/content in a separate section (i.e., Movie of the week, first looks, releases, film trailers, etc).

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Monetization - Cost per View / "Video Ad Sense" Model

- Users have so much freedom of choice for the consumption of media that marketers can no longer assume they can **"buy time"** within it.
- Advertisers are becoming obliged to offer **compelling, relevant advertising** content and services. Google's advertising model made this clear, whereby advertisers not only bid for the privilege of real estate but advertising that does not make good use of available real estate is penalized.
- We propose a revenue model for YouTube that treats **advertising and content as near-equals**, as in Google's "natural v. sponsored" search results. Cost per view paid video advertising would appear throughout the YouTube site, alongside the programming.
- Advertisers would **bid for keyword-space**, and could ultimately upload their own creative.
- Audiences would be receptive to the advertisers' content because it would never be forced upon them but offered more as a ***service*** **or as additional content** to them.
- Advertising content that doesn't **perform** (is not watched) would be automatically discounted and would ultimately disappear.

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Monetization - Run Of Site / Advertising Network

- We assume the use of **advertising network** for yield management.
  - Conservatively we estimate an RPM of Y based on network experience for US, and Z for international
  - Upside from potential for cookieing users across our network
  - Upside from registration of users in a larger network

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A Viacom/Youtube Combination Can Represent Significant Upside For Both Companies

Sources for potential differentiation for YouTube/Viacom

- Provide **users with fame** on television i.e., The crowd decides, we put it on air - best of appears weekly on Comedy Central and MTVN, provides additional incentive for users to upload, vote and promote themselves on YouTube
- **Brands**/ **editorial** fit enables us to both source **talent**, innovative **content** for consumption across platforms. We are one of the few providers willing to put edgier content on TV. Ie. User generated music video, user generated ads on television
- **Video content** – breadth and depth can power YouTube to the next level of relevance. By providing all of our clip based video in raw form – i.e. non branded editorial experience- simple search and obtain. We can push YouTube to become a more comprehensive destination and source for broader syndication
- **Promotion** – fit with our target audience and demo. We can reinforce and drive traffic/ promotion to YouTube.

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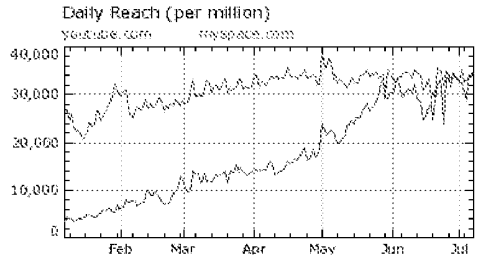
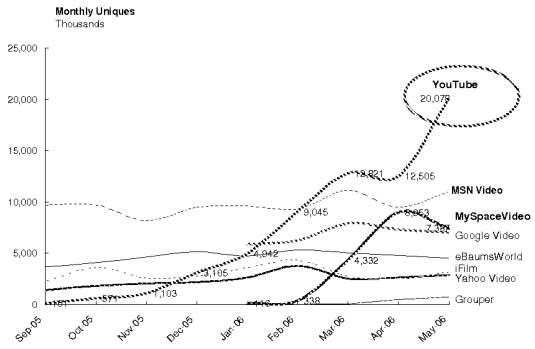
YouTube is a current leader with significant audience reach

- In the video category YouTube is a clear leader with **20M uniques** (NetRatings) (12.7M according to MMX) growing 100% month-on-month.
- By NetRatings it has reach **#20 online** (US only).
- YouTube has a massive global reach: **it is a top 10 site in 8 countries**, a top 20 site in 18 countries, and a top 50 site in 49 countries. Overall, Alexa ranks it 19th in the world.
- Relative to the competition it is experiencing **3-5X time spent** with an average of 36 minutes per unique per month (MMX).

Alexa Rankings – July 2006



NIELSEN NETRATINGS MONTHLY UNIQUES



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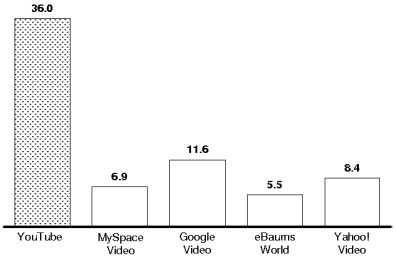
Audience Metrics - Cont

- With the nature of many-to-many video sharing, YouTube is tapping a **network effect** that will be challenging to displace
- Users continue to upload ~**70K videos per day** and invest in tagging, cataloging and sharing their videos.
- The site is expanding the breadth and depth of the content offering – with greater audience, the value of "broadcasting yourself" increases.

> *"YouTube is currently serving 70 million videos per day to six million unique users daily, up from 3 million in December, with more than 60,000 videos being uploaded per day. YouTube is serving more than 200 million page views a day and is ranked the 18th most trafficked site on the Internet, according to Alexa." – YouTube Site*

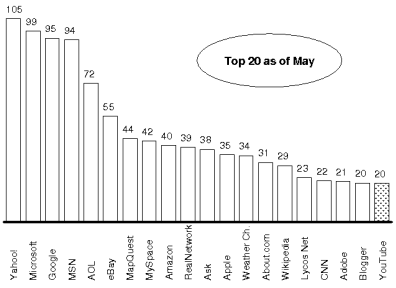
May - Average Time Spent per Unique

Minutes



NetRatings Monthly Unique Visitors

Millions



Source: Net Ratings May

4

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VIA02159173

Advertisers Have Started To Migrate

- Film studio based advertising is the **#1 advertising category across** MTVN representing $517M and 17% of total dollars spent (Film $403M, HV $114M).
- As demonstrated by recent deals **(Disney, NBC, Weinstein**), this community is particularly prone to migrate dollars quickly where the target audience aggregates.
- Additional **categories of advertisers remain unclear** – i.e. CPG association with UGC has been limited

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Competition From Traditional And Non-traditional Sources Is Significant

Social Networks:

- **MySpace** has recently developed a **video sharing service** similar to YouTube. The leverage in the scale of promoting their service may detract from YouTube usage.
- MySpace may chose to **shut-down YouTube** usage which may represent up to 10% of current usage (70% of embedded, 15% of all plays are embedded)

Video Search:

- **Google Video, MSN video, Yahoo Video, AOL Video** Marketplace are all targeting searchable video content online. In particular Google Video is targeting the YouTube model of instant upload, viewing and tagging as a method for searching video content

Pure Plays/ Start-ups:

- Grouper, Revver and "hundreds" of other video sharing sites have emerged to tap this audience phenomena

Competitive risk from NOT owning

- Significant competitive threat from a **MySpace/YouTube consolidation**. Should MySpace acquire YouTube the consolidated value chain could represent a content development and distribution company that commands significant audience time in our core demographics
- YouTube remains one of the few pure-play companies with growing scale to acquire

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Company Background

- Founded February 2005
- Site motto: "Broadcast Yourself"
- Features and usage
  - Users can instantly upload, watch, tag and share videos.
  - Getting to comprehensive - search millions of videos uploaded by community members
  - Personalize the experience by subscribing to member videos, saving favorites, and creating playlists. Developing a persona on YouTube
  - Embed YouTube videos on websites using video implants or APIs
  - Users can make their posted videos public or private
  - Ability to watch and share videos from mobile phones or PDAs
- Management:
  - Chad Hurley – CEO & co-founder – prior Paypal
  - Steve Chen – CTO & co-founder – Prior Paypal
  - Sales and bus dev. mostly x-Yahoo! (Chris Maxcy)
- Investors:
  - YouTube announced its first round of funding in November 2005 for $3.5 million from venture-capital firm Sequoia Capital. In April 2006, YouTube received an additional $8 million in a second round of funding from Sequoia – investment led by Roelof Botha, former CFO of PayPal

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Sponsored video opportunity

Funny videos
Browse a huge selection now. Find exactly what you want today.

funny video clips
Ringtones at no cost Instant download on your cell phone

Satellite TV on your PC.
Controversial website exposes 100% free satellite TV on your computer

Funny Videos
Get 5 Top Deals on Funny videos

Ads by Goooooogle

Advertise on this site

Space Camp

Rate this video
2564 ratings
Please login to rate this video.

Save to Favorites
Add to Groups
Share Video
Blog Video
Flag as Inappropriate

Views: 607,943
Comments: 1330
Favorited: 1864 times
Honors: 1 show
Links to this video: show

About This Video

Added on March 12, 2006, 03:35 PM
by mykneed (8 videos)

Provided by:
Get your official Brent Simon merch here! Space Camp tshirts and more!

http://www.nerdpunk.com

From the creators of the Bittorrent Song, comes Space Camp. The new song/video from Brent Simon.

Add Brent on myspace

http://www.myspace.com/brentsimon

... (more)

Tags: fun song music brent space camp geek nerd keyboards funny emo

URL: http://www.youtube.com/watch?v=UYOoxF

All Aboard The Crazy Train
02:38
From: studio411

Just Like Eminem's Lazyeye Rap
02:41
From: rickyste

Learn the song and create a short routine

Ryan Leslie's open call for talent
02:40
From: nextselection

17

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Schapiro Exhibit 127

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------X

VIACOM INTERNATIONAL, INC., COMEDY PARTNERS, COUNTRY MUSIC TELEVISION, INC., PARAMOUNT PICTURES CORPORATION, and BLACK ENTERTAINMENT TELEVISION, LLC,

Plaintiffs,

vs. No. 07-CV-2103

YOUTUBE, INC., YOUTUBE, LLC, and GOOGLE, INC.,

Defendants.

----------X

VIDEOTAPED DEPOSITION OF
BLAIR HARRISON
NEW YORK, NEW YORK
WEDNESDAY, DECEMBER 9, 2009

BY: REBECCA SCHAUMLOFFEL
JOB NO. 18268

A P P E A R A N C E S:

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ALSO PRESENT:

Carlos King, Videographer

the form.

Q. In your own opinion. Forget about what she meant.

14:16:09 A. For a purchase to be Viacom's MySpace, MySpace was, I think, the largest acquisition of a user-generated digital media platform. YouTube was a user-generated video 14:16:28 media platform, dot, dot, dot. It could be Viacom's version of same.

Q. Did you ever hear discussion of whether Mr. Redstone and Mr. Dauman were frustrated about the fact that 14:16:58 Rupert Murdoch bought MySpace rather than Viacom?

A. I never heard anything about Sumner Redstone's feelings or Philippe Dauman's feelings, I think, until 14:17:12 Freston got fired, and then there was an article everywhere. But I think it was something I read about it then. But prior to that, no.

Q. After Freston was fired, you 14:17:22 heard there was frustration about the

failure to get MySpace?

A. I have a vague recollection of Sumner actually saying something to the press.

14:17:30

Q. In any event, in this E-mail on July 5th, '06, you write to Miss McGrath that you believe that "if we can make a business out of it, we should go and buy it," meaning YouTube, correct?

14:17:56

A. Yes.

Q. And the goal was not to have Viacom become a massive copyright infringer, obviously?

14:18:16

A. Correct.

Q. And you detailed -- in your E-mail, you listed some differences between Napster and YouTube, right?

A. I did.

14:18:29

Q. Do you know what you meant when, at the end of this paragraph, you wrote, "Napster had effectively no non-infringing uses, YT had many"?

A. Yes.

14:18:44

HARRISON

Q. What did you mean?

A. My recollection of Napster, from the time -- because had already been dead for awhile in July of '06 -- was that it was exclusively, almost exclusively populated by music that had been aggregated from the hard drives of its audience, and that YouTube -- one of the functions that YouTube served was to enable individuals to share videos, that they had created themselves, with their friends and family, and even the public at large.

Q. And eventually, you and others came together and put together an analysis of a possible YouTube acquisition, correct?

A. Correct.

Q. And the PowerPoint was prepared, right?

A. Yes.

Q. By the way, do you remember the code name for the possible acquisition?

HARRISON

A. I don't. I would be amused to hear it again.

Q. Does "Project Beagle" ring a bell, as in the dog that hunts a fox?

14:20:22

A. Really? I don't recall the name. I normally would.

MR. SCHAPIRO: We are going to mark Exhibit 12. Meanwhile, the videotape is about to run out. While we mark, and you look at Exhibit 12, we can changed tape.

14:21:03

THE VIDEOGRAPHER: The time is 2:21, and we are off the record.

(Whereupon, a recess was held.)

(Whereupon, the aforementioned documents, VIA 02004550 through '4568, were marked as Defendant's Exhibit Harrison-12 for identification as of this date by the Reporter.)

14:20:58

THE VIDEOGRAPHER: The time is 2:22 p.m., and we are back on

14:22:04

Schapiro Exhibit 128

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

VIACOM INTERNATIONAL INC., COMEDY PARTNERS, COUNTRY MUSIC TELEVISION, INC., PARAMOUNT PICTURES CORPORATION, and BLACK ENTERTAINMENT TELEVISION LLC,	)	
Plaintiffs,	)	
vs.	)	Case No.
YOUTUBE, INC., YOUTUBE, LLC, and GOOGLE, INC.,	)	1:07CV02103
Defendants.	)	
THE FOOTBALL ASSOCIATION PREMIER LEAGUE LIMITED, BOURNE CO., et al., on behalf of themselves and all others similarly situated,	)	
Plaintiffs,	)	
vs.	)	Case No.
YOUTUBE, INC., YOUTUBE, LLC, and GOOGLE, INC.,	)	07CV3582
Defendants.	)	

VIDEOTAPED DEPOSITION OF JUDY McGRATH
New York, New York
Wednesday, July 29th, 2009

REPORTED BY:
ERICA RUGGIERI, CSR, RPR
JOB NO: 17161

July 29, 2009

8:09 a.m.

VIDEOTAPED DEPOSITION OF JUDY McGRATH, held at the offices of Wilson Sonsini, Goodrich & Rosati, 1301 Avenue of the Americas, New York, New York, pursuant to notice, before before Erica L. Ruggieri, Registered Professional Reporter and Notary Public of the State of New York.

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A P P E A R A N C E S: (Cont'd)

ALSO PRESENT:

MICHELINA HALLEY, MTV Networks

ANDRA SHAPIRO, MTV Networks

CARLOS KING, Videographer

McGRATH

A. You mean as in socializing with people?

Q. As in making the world a better place.

11:21:54

A. No, I didn't say that.

Q. So do you believe --

A. I said this is what I did in my free time.

11:22:00

Q. Ms. McGrath, I'm not asking you about the article. I'm asking you a question about what you know today.

Sitting here, you are aware, are you not, that YouTube has all sorts of socially beneficial uses?

11:22:10

MS. KOHLMANN: Objection.

A. I'm aware that YouTube is a popular video experience for millions of people.

Q. But you are aware that the video experience that YouTube affords to millions of people is one that in many ways helps make the world a better place, right?

11:22:26

MS. KOHLMANN: Objection.

11:22:37

A. I would say it's a pleasurable experience, because people -- based on its popularity rankings. I wouldn't make a 11:22:51 comment about whether it's making the world a better place.

Q. You know, for example, that servicemen in Iraq use YouTube to send videos of themselves to their families, 11:23:01 right?

A. Yes.

Q. That's a good thing, right?

A. That's a good thing.

Q. That's a socially beneficial use 11:23:07 of YouTube, isn't it?

MS. KOHLMANN: Objection.

A. Yes.

Q. You know that candidates running for office use YouTube to get their 11:23:15 message to the electorate, right?

A. I do.

MS. KOHLMANN: Objection.

Q. That's also a socially beneficial use of the YouTube service, 11:23:22 right?

A. Now I see where you are going. That's a beneficial aspect, yes.

Q. That helps make our democracy function better, right?

11:23:35

MS. KOHLMANN: Objection.

A. I wouldn't go so far as to make that statement.

Q. Do you think it helps improve our democracy that candidates can use YouTube to speak directly to the electorate?

11:23:50

MS. KOHLMANN: Objection.

A. I can't say.

Q. You know that elected officials use YouTube to speak to their constituents via YouTube?

11:23:58

A. I do.

Q. You think that's a socially beneficial use of the service, right?

11:24:08

MS. KOHLMANN: Objection.

A. Well, they believe it is.

Q. Do you believe it is?

A. I believe there are many ways candidates speak to people, and that's one

11:24:20

of them.

Q. And that's a good thing, right?

MS. KOHLMANN: Objection.

11:24:44 A. I believe it's a popular experience.

Q. Ms. McGrath, that's not the question.

You know that elected officials

11:24:53 use YouTube to speak to their constituents via YouTube, and I'm asking you whether that's a socially beneficial use of the YouTube service.

A. In my opinion, you mean?

11:25:03 Q. Do you believe it to be?

A. I believe it is.

Q. You are aware of the CNN YouTube presidential debates, right?

A. I am.

11:25:30 Q. That, too, was a socially beneficial use of YouTube, right?

A. And CNN.

Q. And YouTube, right?

A. And YouTube.

11:25:36 Q. Did you ever visit President

Obama's campaign's official channel on YouTube?

A. I don't think so.

11:25:47 Q. You are aware he had one, though, right?

A. Yes.

I went to his website.

Q. Don't you think that President 11:25:52 Obama's campaign channel on YouTube was a socially beneficial use of YouTube?

MS. KOHLMANN: Objection.

A. I believe any time the president communicates on television or on-line to 11:26:24 the population, that's a good thing.

Q. Including when he does so through YouTube, correct?

A. Correct.

Q. Where he can reach an audience 11:26:38 of millions, correct?

A. He can reach an audience of millions in many places.

Q. But on YouTube in particular, right?

11:26:52 A. I believe it is one of the ways

he communicates with millions of people, yes.

Q. And you think that's a good thing?

11:26:58

A. I do.

Q. You would say the same thing about Senator McCain's channel on YouTube, right, even if you didn't vote for him?

11:27:05

MS. KOHLMANN: Objection.

A. Yes.

Q. You believe that YouTube has significant legitimate uses, don't you?

MS. KOHLMANN: Objection.

11:27:24

A. I believe that YouTube has legitimate uses, yes.

Q. You believe those legitimate uses --

A. I would not --

11:27:31

Q. -- are significant, in terms of the overall use of the site, don't you?

MS. KOHLMANN: Objection.

A. I believe most of the use of the YouTube site is -- let me retract that.

11:27:47

What was the question again?

McGRATH

Q. You believe that the legitimate uses of YouTube that you referenced are significant, in terms of the overall use
11:27:57 of the site, right?

A. I really don't know if they are a significant part of what drives the site traffic.

Q. You believe them to be, though,
11:28:05 right?

MS. KOHLMANN: Objection.

A. I did not say that. I have no idea.

Q. Do you consider your use of the
11:29:19 YouTube service to have been legitimate?

MS. KOHLMANN: Objection.

A. To the best of my recollection, I would say yes.

Q. Ms. McGrath, Viacom considered
11:29:45 acquiring YouTube, correct?

A. Correct.

Q. An acquisition of YouTube was contemplated by the most senior executives at Viacom and MTV Networks, right?

11:29:57 MS. KOHLMANN: Objection.

A. Right.

Q. Mr. Freston, the CEO of Viacom at the time, was involved in evaluating a potential acquisition of YouTube by Viacom, correct?

MS. KOHLMANN: Objection.

A. Evaluating. Mr. Tom Freston had the ultimate decision-making on all acquisitions, so I would -- I'm not sure what you mean by involved in the --

Q. He played a role in considering the acquisition of --

A. Yes --

Q. -- YouTube?

A. -- he did.

Q. Mr. Wolf, the president and chief operating officer of MTV Networks was also involved or played a role in evaluating a potential acquisition of YouTube, right?

MS. KOHLMANN: Objection.

A. I believe he did.

Q. What was your role in Viacom's efforts to acquire YouTube?

Schapiro Exhibit 129

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

VIACOM INTERNATIONAL, INC., COMEDY PARTNERS, COUNTRY MUSIC TELEVISION, INC., PARAMOUNT PICTURES CORPORATION, and BLACK ENTERTAINMENT TELEVISION, LLC,

Plaintiffs,

NO. 07-CV-2203

vs.

YOUTUBE, INC., YOUTUBE, LLC, and GOOGLE, INC.,

Defendants.

VIDEOTAPED DEPOSITION OF ERIK FLANNIGAN
NEW YORK, NEW YORK
THURSDAY, OCTOBER 16, 2008

BY: REBECCA SCHAUMLOFFEL, RPR, CLR
JOB NO. 16002

OCTOBER 16, 2008

9:30 a.m.

VIDEOTAPED DEPOSITION OF ERIK FLANNIGAN, taken at the offices of WILSON, SONSINI, GOODRICH & ROSATI, 1301 Avenue of the Americas, New York, New York, pursuant to notice, before REBECCA SCHAUMLOFFEL, CLR, RPR.

A P P E A R A N C E S:

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ALSO PRESENT:

Michelena Hallie, MTV Networks

Manuel Abreu, Videographer

content that we felt was put up by the content owner. Meaning, more often than not when we do that, it happens on
11:44:09 a blog of ours.

An ideal example to represent this would be the Comedy Central insider blog which covers comedians and because many comedians
11:44:21 upload their content to YouTube, Funnier Guy, many of their sites, we often site the content being uploaded by a comedian that we cover and we will include an embed. Sometimes we send
11:44:36 people to a site. There is probably -- I suspect -- there is certainly no policy that says always embed, never link.

Q. But the policy is embed to
11:44:47 content that you have a reason to believe is authorized on the YouTube site; is that correct?

A. As it -- I wouldn't limit that to YouTube.

11:44:57 Q. So my original question was,

are there guidelines about linking to or embedding YouTube on your sites?

A. Then I would change my answer because there are guidelines that would go broader than YouTube.

Q. Okay. Are there any YouTube specific guidelines?

A. Not that I know of that wouldn't be true for other sites.

Q. How are the folks who are charged with the task of embedding content from other online video sites tasked -- they are supposed to determine whether the content to which they are linking or embedding is authorized?

A. No one is charged with that task. There is no task. The -- in many instances, again, with comedians being the most common example, there are a lot of cases like that where the editorial team may have an actual personal relationship with that comedian or know that that comedian in

fact perhaps posted that YouTube clip on their own website, so we may not be taking it from YouTube initially. We
11:46:35 are taking it is from the comedian's website. So, we may take that as a sort of an implication that the comedian is okay with the content, therefore, we are okay with that
11:46:44 content.

So that kind of criteria I would call kind of a common sense criteria is what is generally applied when we decide whether we are going to
11:46:57 embed something or not.

Q. YouTube is a very popular for comedians to upload their own content?

A. Among other sites, but sure.

11:47:04 Q. And that content is authorized to be there by those comedians?

A. I couldn't say -- I can't vouch for whether it is all is or not.
11:47:11 Certainly some pieces where they the

channel creator, I think we take it on faith that it is authorized.

Q. And that's quite common in your experience with YouTube?

MR. GUELI: Objection to the form of the question.

A. I probably couldn't handicap the commonality of that.

Q. Can you identify for me which sites within the -- within your organization have imbeds as to YouTube content?

A. Comedy Central has from time to time. Spike.com has from time to time. I don't know if Gametrailers has or not. Atom, probably not; now, anyway. There is not sort of a forum for it.

Who am I leaving out? TV Land, no. Yes, I don't know. Actually, maybe they have. I don't know.

Q. How about flux?

A. Flux isn't really a site.

FLANNIGAN

Q. How would you describe flux?

A. I don't manage flux. You know, it is run by different group in a
11:48:40 centralized organization, so it is hard to describe. It is what might be commonly called a social networking platform on which users can have profile pages, show sites can be built.
11:49:02 Commenting ratings, things like that have sort of standard issues, social networking behaviors can be done, but it is not exactly a place or a single site.

11:49:12 Q. Who is in charge of Flux?

A. I believe today, it reports up to Kenny Miller.

THE COURT REPORTER: Off the record.

11:49:48 THE VIDEOGRAPHER: The time is 11:49 a.m. This completes tape number one of video deposition of Erik Flannigan.

(Whereupon, an
11:49:55 off-the-record discussion was

held.)

THE VIDEOGRAPHER: The time is 2:26 p.m. This is the beginning of tape number three of the video deposition of Erik Flannigan.

BY MR. KRAMER:

Q. Mr. Flannigan, have you ever watched videos on YouTube?

A. I have.

Q. How many?

A. I don't know.

Q. Hundreds?

MR. GUELI: Are you asking for work related or just personal?

MR. KRAMER: Just asking how many videos he watched on the YouTube service.

A. A few hundred.

Q. Less than a thousand, do you think?

A. Probably, yes.

Q. You still use YouTube to watch videos today?

A. I do.

Q. How often would you say you have used the service; once a day, once a week, once a month?

14:26:32

MR. GUELI: Again, just for clarification, are you drawing any distinction between work related versus personal use here?

14:26:41

MR. KRAMER: No, I am not.

A. Probably -- once a week is probably a fair characterization.

Q. Do you watch YouTube videos while you are at work?

14:26:52

A. I have.

Q. Do you watch them while you are at home?

A. I have?

Q. For the videos you watched, did you consider them to be infringing any copyrights?

14:26:59

MR. GUELI: Object to the form of the question.

A. Some yes, some no.

14:27:10

Q. So setting aside the ones

that you believe infringed copyrights owned by Viacom, have you watched any videos on the YouTube service that
14:27:18 believe infringe copyrights?

A. Yes.

Q. So were you engaged in copyright infringement to your understanding by watching videos that
14:27:27 you considered infringing?

MR. GUELI: I object to the form of the question.

A. Legally, I have no idea.

Q. What information would you
14:27:33 need to make that determination?

A. I have no idea what I would need.

Q. Have you watched videos on the YouTube service that you believe
14:27:41 did not infringe a third-party copyrights?

A. Yes.

Q. What is the distinction between those two types of videos in
14:27:50 your mind? How are you making the

distinction between those you believe did infringe copyrights and those you believe did not?

14:28:10 A. I would characterize the ones that I believe didn't -- I can think of examples -- types of examples in my mind where, for instance, the person who uploaded the video appears

14:28:21 in the video. They are a friend of mine. They are a child of a friend of mine. They are someone like that. I know the person, they put the video up or they are -- to go one step further,

14:28:33 they are a stand-up comedian that appears to control the channel. Every video they have is from them. They write notes, saying, hi, fans, I am doing this, this and that. It seems

14:28:44 pretty clear passing the common sense test that this comes from the person that puts it up there in the first place.

The ones in the other

14:28:51 category would be where the uploader is

extremely unlikely to have been the originator or possibly the owner of content that I know to be generally
14:29:04 owned by someone else or the nature of the way they posted the content implies an amateurism to suggest they were not authorized agents.

Q. Do you personally know any
14:29:18 other people who view videos on YouTube?

A. I do.

Q. How many people do you know view YouTube?

14:29:25 A. You know, I've never surveyed them.

Q. Is it hundreds?

A. Probably in the hundreds, yes.

14:29:31 Q. And what -- we are talking about friends, family, co-workers?

A. Certainly co-workers. Friends, family, probably not as much.

Q. To your knowledge, do these
14:29:43 people that you know that use YouTube

use it to watching infringing videos?

MR. GUELI: Object to the form of the question.

14:29:49 A. I don't know what they are using YouTube to watch necessarily.

Q. Do you know of any your co-workers at Viacom that use YouTube to watch infringing videos?

14:29:59 MR. GUELI: Object to the form of the question.

A. I know co-workers who have watched infringing videos on YouTube. I don't know that they use it to watch

14:30:18 infringing video.

Q. Who do you know has watched infringing videos on the YouTube service?

A. I couldn't possibly have

14:30:26 enough detail to know. I can only presume.

Q. Okay, so when you answered the last question before --

A. Actually, you're right. I

14:30:32 presume they do. I certainly have no

tracking of what their viewing habits are.

Q. Do you personally know people that have uploaded clips to the YouTube service?

14:30:38

A. I do.

Q. Do you know people that have uploaded clips to the YouTube service that violate third-party copyrights?

14:30:47

MR. GUELI: Objection to the form.

A. Not with certainty, no.

Q. So you can't identify anyone that you know personally that's uploaded video clips in violation of a party's copyright?

14:31:15

MR. GUELI: Objection to the form.

A. I can't think of an example.

14:31:22

Q. How many of the people that you know use YouTube to upload video clips?

A. I don't know.

Q. I will phrase it slightly

14:31:32

differently. How many people do you know that upload video clips to the YouTube service?

14:31:39 A. I would give the same answer. I haven't tracked what they have done. You know, I really don't know. It could be 100 of them, it could be 20 of them. I really have no

14:31:52 idea who has actually uploaded and hasn't uploaded.

Q. You personally have uploaded clips to the YouTube service?

A. I have.

14:31:59 Q. So, you have an account at the YouTube service, right?

MR. GUELI: It is a question -- you know, this is -- I think if you want to ask him about his work

14:32:09 related use of YouTube, that's fine, but his personal use, you know --

MR. KRAMER: Stop the speaking objections.

14:32:20 MR. GUELI: -- is not

appropriate.

Q. Do you have an account on the YouTube service?

14:32:23 MR. GUELI: Answer yes or no.

Q. Do you have an account on the YouTube service, sir?

A. Yes.

14:32:29 Q. Did you understand that when you uploaded material to the YouTube service you were granting YouTube a right to make those materials available to other users of its service?

14:32:38 MR. GUELI: Object to the form of the question.

A. I was aware of the availability of the content by uploading to the YouTube service to

14:32:47 other users.

Q. Did you understand that you were representing to YouTube that you had the rights to share the materials that you were uploading to the service?

14:32:53 A. I did.

Q. When you were uploading videos to the YouTube service, you were notified in the process that you needed
14:33:00 to ensure you have the rights to share the content you were uploading, didn't you?

A. Right.

Q. You were given that
14:33:08 notification, right?

A. Was I given the notification?

I believe through the process of uploading a video, you were
14:33:24 asked that question.

Q. And you confirmed that you had the right to share the videos that you uploaded to the YouTube service, right?

14:33:29 A. Correct.

Q. When was the last time you uploaded a video to the YouTube service?

A. Probably two months ago,
14:33:40 perhaps.

FLANNIGAN

Q. How many videos in total have you uploaded to YouTube?

A. Somewhere in the five to six range.

Q. What were they?

A. They were my friend, Madi Diaz, a musician who my wife is the manager of. Some performances that she had given.

Q. Did you have the right to share those clips through the YouTube service?

A. I did.

Q. Who gave you those rights?

A. Madi herself.

Q. Why did you upload those video clips to YouTube?

A. I uploaded those clips to YouTube so Madi could see performances that I had shot for her.

Q. So this is videos of performances of Madi Diaz that you shot yourself?

A. Correct.

FLANNIGAN

Q. And you then uploaded those performances to YouTube?

A. That's correct.

14:34:27 Q. Did any of those videos infringe any third-party's copyrights?

MR. GUELI: Object to the form.

A. To the best of my knowledge 14:34:36 as Madi is the songwriter and owns her performance and granted me the right to do it and knew I was putting them up on YouTube, no.

Q. Did you -- so, is it your 14:35:08 testimony that the only videos that you have uploaded to the YouTube service are videos of Madi Diaz's concerts?

A. Five of the six were or four of the five. One of them is not.

14:35:20 Q. What is the sixth?

A. Amy Winehouse.

Q. Do you know Amy Winehouse?

A. I don't.

Q. So, do you have any reason 14:35:27 to -- did you have the rights to upload

Amy Winehouse footage to the YouTube service?

A. Probably not.

14:35:33 Q. When did you upload the Amy Winehouse clip to the YouTube service?

A. Some time in 2007.

Q. But you represented to YouTube that you had the authority to

14:35:50 upload that clip when you did, right?

A. I did.

Q. So you lied to YouTube?

A. I interpreted it as something that I -- I wouldn't say I

14:36:07 lied. I would say I gave the -- I represented that I could represent the copyright and there is some copyright of that recording that I actually probably do own because I shot the

14:36:17 footage. So, whether the complete copyright story behind that clip was answered by the question that YouTube asked me, that, I don't know.

Q. Did you upload Madi Diaz

14:36:29 video clips to other video sharing